

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

BANKUNITED N.A.,

Plaintiff,

V.

ASD KITCHEN, INC., AULLAH S. DARWISH,
SAM M. DARWISH, SKINNY IT CORP., AND
RAJESH P. PADOLE,

Defendants.

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Civil Action No. 4:18-cv-804-ALM

PLAINTIFFS' REQUEST FOR ENTRY OF DEFAULT

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Plaintiff, BankUnited, N.A. (“Plaintiff” or “BankUnited”), asks the court clerk to enter a default against Defendant Rajesh P. Padole (“Defendant” or “Padole”) as authorized by Federal Rules of Civil Procedure 55.

A. INTRODUCTION

1. Plaintiff is BankUnited, N.A.
2. On November 9, 2018, Plaintiff sued Defendant for breach of contract. A copy of Plaintiffs' Complaint is attached as Exhibit 1 to the Affidavit of Cameron J. Asby ("Asby Aff.").
3. On November 14, 2018 Defendant was served with a summons and a copy of Plaintiffs' complaint by personally serving the summons on Rajesh P. Padole. A copy of the returns of service are attached as Exhibit 2 to the Asby Aff.
4. Defendants' responsive pleadings were due by December 5, 2018. To date, Defendant has not filed a responsive pleading or otherwise defend the suit.
5. Plaintiff is entitled to entry of default.

B. ARGUMENT

6. The court clerk may enter a default against a party who has not filed a responsive pleading or otherwise defended the suit. FED. R. CIV. P. 55(a); *City of N.Y. v. Michalis Pawn Shop, LLC*, 645 F.3d 114, 129-30 (2d Cir. 2011); see *United States v. \$23,000 in U.S. Currency*, 356 F.3d 157, 163 (1st Cir. 2004).

7. The clerk should enter a default against Defendant because Defendant did not file a responsive pleading within 21 days after November 14, 2018, the date of service. FED. R. CIV. P. 12(a)(1)(A)(i).

8. The clerk should enter a default against Defendant because Defendant did not otherwise defend the suit. FED. R. CIV. P. 55(a); *City of N.Y.*, 645 F.3d at 129-30. Defendant was served on November 14, 2018 but did not file a responsive pleading.

9. Plaintiff meets the procedural requirements for obtaining an entry of default from the clerk as demonstrated by Cameron J. Asby's sworn affidavit, attached as Exhibit A. Defendant was served with summons on November 14, 2018. More than 21 days have passed since Defendant was served and Defendant has failed to file any responsive pleading.

10. Defendant is not a minor or an incompetent person.

11. Defendant is not in military service. An Affidavit of Defendant's military status is attached as Exhibit B.

12. Because Defendant did not file a responsible pleading or otherwise defend the suit, Defendant is not entitled to notice of entry of default. *Haw. Carpenters' Trust Funds v. Stone*, 794 F.2d 508, 512 (9th Cir. 1986).

C. CONCLUSION

13. Plaintiff requests that the clerk grant their request for entry of a default against Defendant Rajesh P. Padole, in favor of Plaintiff.

Filed December 10, 2018

Respectfully submitted,

DUANE MORRIS LLP

By: /s/ Cameron J. Asby
Cameron J. Asby
State Bar No. 24078160
E-mail: cjasby@duanemorris.com
Thomas W. Sankey, P.C.
State Bar No. 17635670
E-mail: twisankey@duanemorris.com
DUANE MORRIS LLP
1330 Post Oak Boulevard, Suite 800
Houston, TX 77056-3166
Tel.: 713.402.3900
Fax: 713.402.3901

**ATTORNEYS FOR PLAINTIFFS
BANKUNITED N.A.**